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BOARD OF PODIATRIC MEDICINE
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INFORMATION ON USE OF THE TERM *PODIATRIC PHYSICIAN & SURGEON*

"Podiatric Physician" is common usage for Doctors of Podiatric Medicine across the country. It is the preferred designation of many in the profession. The California Podiatric Medical Association's newsletter, for example, is entitled *The California Podiatric Physician*. DPMs are often referred to as physicians by health professionals, patients, and the general public.

However, in California, Section 2054 of the Business & Professions Code limits use of the term "physician and surgeon" to medical doctors.

In 1984, the Board of Podiatric Medicine (BPM) advised licensees:

It is the opinion of the Board of Podiatric Medicine (BPM) that a doctor of podiatric medicine may use the broader terms of *podiatric physician*, *podiatric surgeon* or *podiatric physician and surgeon*, **but not the narrower terms, "physician and surgeon," "physician" or "surgeon."**

In 1990, the California Medical Association (CMA) challenged the board's policy as an "underground regulation," in that the board had approved it as a "policy" but not promulgated it as an enforceable regulation.

In responding to the CMA before the Office of Administrative Law (OAL), BPM took the position that the policy statement was not an underground regulation because it was not a mandatory rule. In any event, BPM's attorney--Loren E. McMaster, in private practice prior to his appointment to the Sacramento Superior Court--argued that BPM's interpretation of the law was correct.

Not surprisingly, OAL ruled the policy was an underground regulation and was therefore unenforceable. BPM rescinded the policy along with several others not strictly limited to internal procedures.

However, OAL did not rule on McMaster's arguments upholding BPM's interpretation of the law. Neither has any other agency or court.

McMaster outlined the legal arguments:

"III. THE POLICY DOES NOT VIOLATE EXISTING LAW

"CMA argues that the policy of the Podiatric Board violates existing law. Whether it does or does not is not germane to the issue at hand which is whether or not the policy constitutes an "underground regulation." If the OAL determines that the policy decision is not a regulation, that is the end of the matter. OAL does not pass on whether policy determinations of state agencies that do not constitute regulations conflict with some provision

***"Boards are established to protect the people of California."
Section 101.6, B&P Code***

of law. Nevertheless, the question will be briefly addressed so that there is no confusion concerning BPM's position on the matter.

"CMA argues that the policy decision violates the law because a medical consumer is likely to be confused or misled into believing that a podiatric physician and surgeon's scope of practice is broader than that of one who uses the title podiatrist. On its face, the argument is illogical and unpersuasive. With today's specialized practice of medicine, the use of the term podiatric physician and surgeon is more descriptive and provides more information to the public than that provided by orthopedic surgeons or gastroenterologists who use only the title physician and surgeon.

"CMA further contends that under the Business and Professions Code and the various court decisions and opinions of the Attorney General, only persons licensed in this state as "M.D.'s" may use the title "physician and surgeon." Business and Professions Code

§ 2054 does state that it is a misdemeanor for one who does not have a valid certificate as a physician and surgeon to hold himself or herself out as a "physician," "surgeon," or "physician and surgeon." This statute does not invalidate the policy decision since nothing therein authorizes a podiatrist to use the title "physician and surgeon." Rather, the policy states that it does not consider use of the term "podiatric physician and surgeon" to be in violation of the law, but does prohibit use of the terms "physician and surgeon," "physician," or "surgeon."

"The Attorney General opinions cited and relied upon similarly do not prohibit a podiatrist from using the term "podiatric physician and surgeon." In 57 Ops. Cal. Atty Gen. 79 (1974), the Attorney General concluded that a podiatrist is not a "physician" under the narrow definition of "physician and surgeon" contained in the Medical Practice Act, and that Business and Professions Code §2142.10 (the predecessor of §2054) forbids podiatrists from representing themselves as physicians. The opinion did not express the view that the use of the restrictive term, podiatric physician and surgeon would violate the law.

"An analysis of the opinion and the scope of practice of a podiatrist leads to the conclusion that the use of such term is appropriate. First, the Attorney General's opinion expressly noted that any practitioner of the healing arts, including a podiatrist, may be considered to be a "physician." This is obviously true since a podiatrist is empowered to diagnose and treat medically those diseases, deformities, and injuries that relate to the foot and/or ankle. Business and Professions Code § 2472. A podiatrist is also authorized to prescribe drugs in the course of his or her practice. Business and Professions Code

§ 4036. The Attorney General also stated that the term "licensed physician" in its broader sense would include "any licensed person engaged in the healing arts." The term "specifically include[s] . . . podiatrists licensed by the Board of Medical Examiners. . . ." 56 Ops. Cal. Atty Gen. 1, 4 (1972). In addition, a doctor of podiatric medicine is authorized by law to perform surgery on the foot and ankle. Business and Professions Code § 2472; 4 Ops Cal. Atty Gen. 286 (1944). Therefore, it would appear appropriate for a podiatrist to refer to himself or herself as a podiatric surgeon.

"Second, a recent opinion of the Attorney General has stated that the presumption that use of certain designations would violate the Medical Practice Act may be overcome if those terms are used with other information so that the public will not be misled. 71Ops. Cal. Atty. 54, 62 (1988). That opinion concluded that while a certified acupuncturist who is not licensed as a physician and surgeon under the Medical Practice Act (MPA) may use the initials O.M.D. (if otherwise entitled) or the title "Oriental Medical Doctor" if such use is accompanied with additional information that removes the implications that the acupuncturist is licensed as a physician and surgeon under the MPA. The opinion noted that any presumption of illegality if certain initials or terms are used by a person not licensed (e.g., "M.D." or "physician and surgeon") "may be overcome if the terms are used with other information so that context dispels their ordinary implication that an allopathic

practice is involved." 71 Ops. Cal. Atty Gen. at 62. Applying that analysis to the situation at hand, the conclusion to be reached is that a podiatrist's use of the term "podiatric physician and surgeon" is permissible and is not in violation of the Medical Practice Act because the additional information used ("podiatric") dispels any implication that an allopathic practice is involved.

"Since use of both terms "physician" and "surgeon" are applicable to podiatrists, and since the use of the additional term "podiatric" dispels any implication of an allopathic practice, it follows that the use of the terms "podiatric physician and surgeon" or "podiatric physician" or "podiatric surgeon" by a licensed podiatrist is not in violation of existing law."⁴

⁴ "CMA in arguing that the law prohibits podiatrists from using the term "podiatric physician and surgeon," has sought to lump podiatrists together with chiropractors. CMA has cited and relied upon Crees v. California State Board of Medical Examiners (1963) 213 Cal.App.2nd 195, 28 Cal.Rptr. 621 and People v. Christie (1949) 95 Cal.App.2nd Supp. 919 [mis-cited in the CMA brief as 94 Cal.App.2nd Supp.] both of which conclude that chiropractors may not under the law refer to themselves as chiropractic physicians. These cases are not persuasive as applied to podiatrists since as the Court in Crees noted, the term is inappropriate for chiropractors since they do not administer drugs or perform surgery. 213 Cal.App.2nd at 211-212. Podiatrists, on the contrary, do engage in those medical practices. In Christie the Court noted that there is a distinction between those in the healing arts who employ medicine and those that do not. 95 Cal.App.2nd Supp at 922. Since chiropractors do not, they cannot be considered to be a physician, no matter what modifier is used. Podiatrists, on the other hand, are authorized to employ and prescribe medicines and drugs in their practice (Business and Professions Code §§ 2472 and 4036) and may properly be considered a podiatric physician."